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Mayor

**CITY OF NEWTON, MASSACHUSETTS**  
Department of Planning and Development

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**MEMORANDUM**

Public Hearing Date: June 28, 2010  
Zoning and Planning Action Date: Sept. 13, 2010  
Board of Aldermen Action Date: Sept. 20, 2010  
90-Day Expiration Date: Sept. 26, 2010

DATE: June 25, 2010

TO: Alderman Marcia T. Johnson, Chairman, and  
Members of the Zoning and Planning Committee

FROM: Candace Havens, Interim Director of Planning and Development  
Juris Alksnitis, Interim Zoning Administrator

RE: **Petition #93-10, ALD. JOHNSON AND SANGIOLO** requesting revision of **Section 30-27** of the City of Newton Ordinances governing membership of the Zoning Board of Appeals by providing selection criteria guidance as follows: Members shall include at least one citizen who has expertise or demonstrated interest in real estate/land-use law, at least one citizen who has expertise or demonstrated interest in planning, at least one citizen who has expertise or demonstrated interest in building construction/development and at least one citizen who has expertise or demonstrated interest in professional design/engineering and at least one citizen who has experience with or demonstrated interest in the zoning process in Newton membership requirements for Zoning Board of Appeals

CC: Board of Aldermen  
Planning and Development Board  
John Lojek, Commissioner of Inspectional Services  
Marie Lawlor, Assistant City Solicitor

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The purpose of this memorandum is to provide the Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Board. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

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## **BACKGROUND**

On May 10, 2010 and June 14, 2010, the Zoning and Planning Committee (ZAP) continued discussing possible appointment guidelines for candidates considered for membership on the Planning and Development Board and the Zoning Board of Appeals, respectively. The Planning and Development Department provided two Working Memoranda with information on the responsibilities of the respective boards, composition of membership, and additional information as to membership requirements and appointment procedures in selected neighboring cities and towns and related analysis. On June 14, 2010, ZAP decided to hold Petition #92-10 pertaining to the Planning and Development Board pending further work on this item. However, ZAP elected to proceed with the subject Petition #93-10, pertaining to the Zoning Board of Appeals, seeking to amend the Zoning Ordinance, Section 30-27 so as to require "expertise or demonstrated interest" in certain knowledge-areas.

## **EXISTING ORDINANCE**

**Sec. 30-27. Zoning Board of Appeals.** The first three paragraphs address establishment of the ZBA and read as follows:

"A zoning board of appeals is established and shall consist of five (5) members to be appointed by the mayor, subject to confirmation by the board of aldermen.

Each member shall be appointed for a term of three (3) years. Vacancies shall be filled for the balance of the unexpired term in the same manner in which original appointments are made. The zoning board of appeals shall annually elect a chairman from its members and a clerk. No member shall act in a case in which he is in any way interested.

The mayor shall annually appoint for a term of one year, subject to confirmation by the board of aldermen, five (5) associate members of the zoning board of appeals. The associate members shall be sworn and shall qualify in the same manner as regular members. In the case of a temporarily unfilled vacancy, inability to act, or interest on the part of a regular member, the chairman shall designate one of the associate members to fill such vacancy or serve in place of such regular member, as the case may be. Members and associate members of such board shall serve without compensation."

## **PROPOSED AMENDMENT**

Petition #93-10 proposes that the following new language be inserted in Sec. 30-27:

*Members shall include at least one citizen who has expertise or demonstrated interest in real estate/land-use law, at least one citizen who has expertise or demonstrated interest in planning, at least one citizen who has expertise or demonstrated interest in building construction/development and at least one citizen who has expertise or demonstrated interest in professional design/engineering and at least one citizen who has experience with or demonstrated interest in the zoning process.*

## **DISCUSSION**

It is our understanding that the above language was drafted in the current descriptive manner in order to provide a departure point for further discussion and also for subsequent refinement without necessitating re-advertisement for another public hearing.

As proposed, the subject text is prescriptive and requires each of 5 appointees to possess knowledge or expertise in a particular area. The language does not distinguish between the 5 regular members (3 yr. terms) and the 5 associate members (1 yr terms). If read to apply to the overall membership, then half the members, whether regulars or associates, would need to possess the stated qualifications. If intended to apply to the regular members, the combined effect would be to require one knowledge area per regular member. Other potentially helpful areas of knowledge or expertise would need to be provided through the appointment of qualified associate members. As currently written Sec. 30-27 makes use of associate members in case of vacancy or in situations when regular members are unable to act or fulfill their responsibilities. However, in practice, the Board has developed a schedule, which intentionally provides for more participation of associates, both to gain experience, and also to contribute their expertise. Overall, it makes sense to have persons on the Board who represent a range of experience and backgrounds, including areas such as community development, or housing expertise, or a person who is an "average citizen" or "typical homeowner."

In addition, it would be helpful to clarify what is meant by the term "professional design." For example, would the City be looking for anyone with "professional design" qualifications (training, experience, or registration), regardless of area of practice, or within applicable areas of practice (e.g. architects, landscape designers, civil engineers, surveyors, interior designers, others). It is also noted that in some professions, the term "professional" refers to a registered professional, such as a "professional engineer" who has authority to stamp and certify plans.

The alternative criterion of "demonstrated interest" serves as gateway for prospective candidates who may not have the same level of formal qualification as those who actively practice in their respective fields. While a more flexible criterion, it may also be read as a weaker alternative to having "expertise" and may benefit from further definition, such as experience or service on a relevant municipal advisory group, commission, or task force.

A comparison of the proposed required areas of expertise with the current ZBA regular and associate membership suggests that several regular members and perhaps half of the associate members might not meet the stated fields of expertise. In such case, it would be anticipated that the "demonstrated interest" criterion would apply.

Another approach would be to consider stating a broader group of knowledge areas, which need to be represented among core ZBA membership. This would provide greater flexibility for the Mayor to recruit, vet, and appoint suitable candidates who possess these and/or other qualifications and expertise helpful to executing the mandate of the Board.

## **RECOMMENDATIONS**

The Planning and Development Department suggests exploration of a flexible approach where:

- A core number of positions, say 2-3 positions each in the regular and associate member categories are required to reflect a broader group of knowledge areas.
- A position is provided for a "resident at large."

- The members are appointed with broad discretion of the Mayor in conjunction with an established process (see below).

In addition, it is suggested clarifications be considered in relation to the terms “professional design” and “demonstrated interest.”

In conjunction with the above approach, it is suggested the Board of Aldermen collaborate with the executive office in working out an appointment process which:

- Invites interest in board positions through public advertisements, notices, and outreach.
- Describes the responsibilities and mandate of each board.
- Provides a “job description” for board members.
- Establishes the relevant qualifications for board members from ordinance and by policy.
- Establishes the guidelines for the mix of background, experience, training, geographic representation and diversity desired for each board, as applicable.
- Implements a recruiting, intake, screening, vetting, and approval sequence which results in appointment of highly qualified and well-suited candidates to each board so as to serve the best interests of the City.

All parties agree it is in the best interests of the City to encourage volunteers to participate on the City’s boards and commissions while bringing forward candidates who contribute diverse experiences, competencies, and backgrounds which together promote the execution and effectiveness of the respective boards in carrying out their mandates. As previously discussed, it is anticipated that reasonable guidelines both by ordinance and by administrative policy would facilitate the appointment process as well as the confirmation step by the Board of Aldermen. Once criteria and guidelines are agreed upon, implementation could occur as vacancies arise.

## **ATTACHMENTS**

*ATTACHMENT A: Information on the Newton Zoning Board of Appeals*

### **Information on the Newton Zoning Board of Appeals**

The Zoning Board of Appeals is tasked with acting upon requests for variances as well as Comprehensive Permits under the provisions of 40B. The Board also hears appeals of decisions made by the Commissioner of Inspectional Services actions on compliance with the City's Zoning Ordinance. In recent years, the ZBA has reviewed about one Comprehensive Permit a year with extensive analysis typically provided by Planning Department staff.

#### Zoning Board of Appeals composition

ZBA Rules, Section 1. Membership, together the Newton Revised Ordinances Section 30-27 provide for:

- Mayoral appointment of five members\* subject to approval of the Board of Aldermen. (three-year term)
- Mayoral appointment of five associate members\* subject to approval of the Board of Aldermen (one-year term)

*\*Residency requirement stated in the Revised Ordinances, Section 2-8.*

#### Current ZBA membership

##### Members

Harvey A. Creem (Chairperson)  
Joseph G. Cosgrove, Esq.  
Vincent Farina  
Brooke K. Lipsitt (Vice Chairperson)  
Selma H. Urman, Esq.

##### Expertise/Background

Certified Public Accountant  
Real estate law  
Real estate broker  
Former president of Board of Aldermen  
Presiding officer, MA Energy Facility Siting Board

##### Associates

Hillary S. Brown  
William M. McLaughlin  
James H. Mitchell, Esq.  
Thomas J. Phillips, Esq.  
Jonathan S. Sales

Asset manager, commercial property  
Real estate investment and development  
Real estate investment, development, mgmt.  
Commercial real estate/land use law  
Corporate law practice